

APPLICATION BY BEXAR
METROPOLITAN WATER
DISTRICT FOR AUTHORITY
TO INCREASE IMPACT FEES

§
§
§
§

BEFORE THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
APR -2 PM 2:37
CLERK'S OFFICE

BEXAR METROPOLITAN WATER DISTRICT'S
OPPOSITION TO EXECUTIVE DIRECTOR'S MOTION TO REMAND

TO THE HONORABLE GENERAL COUNSEL OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

COMES NOW the Bexar Metropolitan Water District ("District"), applicant, and files this Opposition to the Executive Director's Motion to Remand filed pursuant to 30 TAC §10.4 in the above-referenced matter. The District would respectfully show that the Motion to Remand should be denied because:

1. The District has paid the delinquent fees upon which the Motion to Remand is based;
2. It appears that no final decision on the District's application is imminent;
3. The public interest would not be served by a delay in the processing of the District's application; and
4. The District's rules expressly provide that the rules should be interpreted so as to avoid delay.

I. DISCUSSION.

This proceeding concerns the District's application for an increase in the impact fee assessed on new development in the District's service area. The District seeks the Commission's approval for authority to levy an impact fee in an amount up to \$2,376 per equivalent dwelling unit for new connections for water service in the District's service area, in order to generate

revenue to recover the costs of capital improvements and facility expansions made necessary by and attributable to new development in the District's service area. The existing District impact fee has been in place for approximately 10 years, while costs for infrastructure development have increased steadily since that time. The need for an increase in the impact fee is long overdue in the District, and prompt consideration of the District's application is in the best interest of all concerned.

The District's application has been pending for well over a year. In September and October 2006, various parties filed Requests for Hearing on the application with the Commission. On March 21, 2007, the Chief Clerk sent out notice that the application and all timely filed requests on the application, *i.e.* the Requests for Hearing referenced above, would be considered at the Commission's April 25, 2007 public meeting. The Chief Clerk's notice further provided that the District's response to those Requests for Hearing was due on April 2, 2007.

Late in the afternoon of Friday, March 30, 2007, the undersigned received the Executive Director's Motion to Remand.¹ That Motion contends that the District is delinquent on three accounts: Accounts 2001-1041 (\$105), 2001-1042 (\$100), and 2001-1043 (\$86.38). Thus, based on the claimed existence of late payments in the total amount of \$291.38, the Executive Director seeks to remove the application from the April 25 agenda.

The District respectfully submits that such a result would be unnecessary under the circumstances. First, the District wishes to point out that the above amounts were paid by the District today. *See Exhibit A.* Accordingly, any and all delinquent fees upon which the Motion to Remand was based have now been paid. Any concern raised by the Motion to Remand has been resolved.

¹ The undersigned had not received any prior notice that a Motion to Remand was being considered by the Executive Director.

Second, the concern expressed in the Executive Director's Motion appears to be premature in the particular circumstances here at issue. The Motion references the Commission's September 1, 2006 Delinquent Fee/Penalty Protocol and notes that, under the Protocol, "the TCEQ does not issue final approval of an application to an applicant that is delinquent in any fee or penalty owed to the TCEQ." Not only is the District no longer delinquent, as noted above, but beyond that, it has always appeared likely that some of the Requests for Hearing in this matter will be granted and that the application will be referred to a contested case hearing. That being so, it is evident that "final approval of an application" is highly unlikely to occur as early as the April 25 public meeting. Because final approval of the application does not appear to be imminent, the provision of the Protocol that forms the basis of the Motion to Remand is not applicable.

Finally, it would not be in the public interest to remove the District's application from the April 25 agenda. The area served by the District is undergoing rapid development. The very purpose of an impact fee increase such as that here at issue is to ensure that a District's costs of supplying service to new development is fairly borne by those who are engaging in the development activity. That certainly is one of the main goals of the District's application. To delay the administrative process whereby that application will be considered — on the basis of a delinquency that was never over \$300 and that has now been paid — would be to elevate form over substance, for the benefit of no one and to the detriment of the District's customers. The invoices at issue provide that "[f]ailure to pay by the due date may result in return or denial of applications" (Emphasis added.) Surely the discretion contemplated in such permissive language should be exercised in this case to prevent the needless delay sought by the Motion to Remand.

II. CONCLUSION.

This proceeding is governed by the Rules of the Commission. The very first one of those Rules, Section 1.1, emphasizes that agency proceedings should be conducted in a manner that "avoid[s] delay" Yet delay — unnecessary delay at that — would be the sole outcome of the Motion to Remand if it were granted. The District respectfully submits that such delay is no longer appropriate, if it ever was, in light of the *de minimis* amount of money at issue, in light of the fact that any such delinquency has now been paid, and in light of the public interest in a prompt consideration of the District's application.

Wherefore, the District requests that the Executive Director's Motion to Remand be denied, and that the District's application be kept on the April 25, 2007 agenda.

Respectfully submitted,

**CLARK, THOMAS & WINTERS,
A Professional Corporation**

By: 

Celina Romero
State Bar No. 17223900
Don C. Lewis
State Bar No. 12275600

300 West 6th Street, Suite 1500 (78701)
P. O. Box 1148
Austin, Texas 78767
(512) 472-8800
(512) 474-1129 – Fax

**COUNSEL FOR BEXAR METROPOLITAN
WATER DISTRICT**

EXHIBIT A

TCEQ DOCKET NO. 2006-1833-DIS

APPLICATION BY BEXAR
METROPOLITAN WATER
DISTRICT FOR AUTHORITY
TO INCREASE IMPACT FEES

§
§
§
§

BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY

AFFIDAVIT OF SUSAN LICHTENWALTER

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Susan Lichtenwalter, a person known to me, who, after being duly sworn, deposed upon her oath as follows.

“1. My name is Susan Lichtenwalter. I am at least twenty-one (21) years of age, of sound mind, have never been convicted of a felony or a crime of moral turpitude, and am fully competent in all respects to make this Affidavit as if called as a witness in this proceeding. I make this affidavit based upon facts personally known to me, and they are all true and correct.

2. I am a paralegal with the law firm of Clark, Thomas & Winters, a Professional Corporation, in Austin.

3. On April 2, 2007, I hand delivered three checks from my law firm made payable to the Texas Commission on Environmental Quality, on behalf of Bexar Metropolitan Water District, a client of the firm. The checks were numbers 85794, 85795, and 85796, in the amounts of \$105, \$100, and \$86.38 respectively. These checks were issued on behalf of the Bexar Metropolitan Water District in order to pay Account Nos. 2001-1041, 2001-1042, and 2001-1043, respectively.

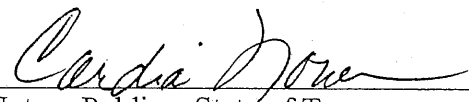
4. True and correct copies of three receipts that I obtained from the Commission cashier, each of which bears the cashier's date-stamp and initials reflecting the Commission's receipt of the checks referenced above, are attached hereto.

5. Further affiant sayeth not."

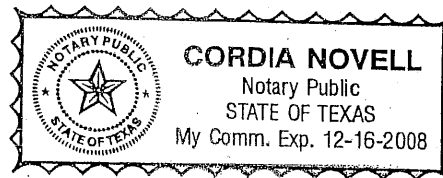


SUSAN LICHTENWALTER

SUBSCRIBED AND SWORN TO before me on the 2nd day of April 2007, by Susan Lichtenwalter, to certify which witness my hand and seal of office.



Notary Public – State of Texas





TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

INVOICE

COMPANY: BEXAR METROPOLITAN WATER DISTRICT
ACCOUNT: 20011041

DETACH BOTTOM PORTION AND RETURN WITH PAYMENT - KEEP TOP PORTION FOR YOUR RECORDS -

PAGE 1

| AC-COUNT NO. | | THIS INVOICE REFLECTS ALL PAYMENTS RECEIVED THROUGH: | | LATE FEES | BALANCE DUE |
|--------------|-------------|--|--|-----------|-------------|
| 20011041 | | DEC08, 06 | | 0.00 | 100.00 |
| INVOICE DATE | INVOICE NO. | DESCRIPTION | | AMOUNT | BALANCE |
| DEC31, 06 | GPS0083450 | STORMWATR PERMIT TXR15E330 FY07 GEN PMTS STORMWTR | | 100.00 | 100.00 |

85794

CLARK, THOMAS & WINTERS

A PROFESSIONAL CORPORATION
P.O. BOX 1148
AUSTIN, TEXAS 78767
(512) 472-8800



Frost National Bank
Member Cullen/Frost Bankers, Inc.
www.frostbank.com

30-9/1140

04/02/2007

PAY TO THE ORDER OF Texas Commission on Environmental Quality

\$

\$105.00

DOLLARS

One Hundred Five Dollars and 00/100*****

Texas Commission on Environmental Quality
Box 13088
Austin, TX 78711-3088

TWO SIGNATURES REQUIRED OVER \$100.00

[Handwritten signatures]

AUTHORIZED SIGNATURE

MEMO ON BEHALF OF BEXAR METROPOLITAN
WATER DISTRICT - ACCT NO. (2001-1041)

⑈085794⑈ ⑆114000093⑆ 591110616⑈

PLEASE RETURN COUPON WITH PAYMENT.
FOR NOI PROCESSING QUESTIONS, SUBMIT AN EMAIL TO SWPERMIT@TCEQ.STATE.TX.US

100.00

See REVERSE SIDE for Explanation of Charges and TCEQ Contact Telephone Numbers.

PLEASE PAY THIS AMOUNT
INCLUDE ACCOUNT NUMBER ON CHECK

TCEQ VIPP Form AR41A 02-16-06

DEC08, 06

DETACH THIS PORTION AND RETURN WITH
CHECK OR MONEY ORDER PAYABLE TO:



TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

| ACCOUNT NO. | BALANCE DUE |
|-------------|-------------|
| 20011041 | 100.00 |

☐ CHECK HERE IF YOUR ADDRESS HAS CHANGED.
PLEASE INDICATE ADDRESS CHANGE ON BACK

**INVOICES NOT PAID WITHIN
30 DAYS OF INVOICE DATE WILL
ACCRUE PENALTIES**

BEXAR METROPOLITAN WATER DISTRICT

2055 W MALONE AVE

SAN ANTONIO

TX 78225

John Joseph
3/29/07

0020011041 1533038 00000100000130068



TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

INVOICE

COMPANY: BEXAR METROPOLITAN WATER DISTRICT
ACCOUNT: 20011043

DETACH BOTTOM PORTION AND RETURN WITH PAYMENT - KEEP TOP PORTION FOR YOUR RECORDS -

PAGE 1

| ACCOUNT NO. | THIS INVOICE REFLECTS ALL PAYMENTS RECEIVED THROUGH: | | LATE FEES | BALANCE DUE |
|--------------|--|-----------------------------------|-----------|-------------|
| 20011043 | DEC08, 06 | | 0.00 | 86.38 |
| INVOICE DATE | INVOICE NO. | DESCRIPTION | AMOUNT | BALANCE |
| JUN16, 06 | R647394B | STORMWATR PERMIT UNALLOCATED CASH | 413.62 | 413.62 |
| DEC31, 06 | GPS0083452 | STORMWATR PERMIT TXR15B578 FY07 | 100.00 | 313.62 |
| DEC31, 06 | GPS0083453 | STORMWATR PERMIT TXR15N605 FY07 | 100.00 | 213.62 |
| DEC31, 06 | GPS0083454 | STORMWATR PERMIT TXR15N606 FY07 | 100.00 | 113.62 |
| | | | | 85796 |

CLARK, THOMAS & WINTERS

A PROFESSIONAL CORPORATION
P.O. BOX 1148
AUSTIN, TEXAS 78767
(512) 472-8800



Frost National Bank
Member, FDIC
www.frostbank.com

30-9/1140

04/02/2007

PAY TO THE ORDER OF Texas Commission on Environmental Quality

\$

\$86.38
DOLLARS

Eighty-Six Dollars and 38/100

Texas Commission on Environmental Quality
Box 13088
Austin, TX 78711-3088

TWO SIGNATURES REQUIRED IF OVER \$2000

[Signature]

AUTHORIZED SIGNATURE

MEMO ON BEHALF OF BEXAR METROPOLITAN WATER DISTRICT - ACCT. NO. 2001-1043

⑈085796⑈ ⑈114000093⑈ 591110616⑈

FOR NOI PROCESSING QUESTIONS, SUBMIT AN EMAIL TO SWPERMIT@TCEQ.STATE.TX.US

86.38

See REVERSE SIDE for Explanation of Charges and TCEQ Contact Telephone Numbers.

PLEASE PAY THIS AMOUNT
INCLUDE ACCOUNT NUMBER ON CHECK

TCEQ VIPP Form AR41A 02-16-06

DEC08, 06

DETACH THIS PORTION AND RETURN WITH CHECK OR MONEY ORDER PAYABLE TO:



TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

| ACCOUNT NO. | BALANCE DUE |
|-------------|-------------|
| 20011043 | 86.38 |

☐ CHECK HERE IF YOUR ADDRESS HAS CHANGED.
PLEASE INDICATE ADDRESS CHANGE ON BACK

INVOICES NOT PAID WITHIN
30 DAYS OF INVOICE DATE WILL
ACCRUE PENALTIES

BEXAR METROPOLITAN WATER DISTRICT

2047 MALONE AVE

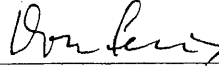
SAN ANTONIO

TX 78225

0020011043 1533038 00000086380130067

CERTIFICATE OF SERVICE

I certify that the foregoing document was served this 2nd day of April, 2007 on the following persons by depositing the same in the United States first-class mail, postage prepaid, and/or by facsimile transmission, as indicated below.



Don C. Lewis

FOR THE EXECUTIVE DIRECTOR:

Kathy Brown, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606
(Via Fax and First Class Mail)

Robert Cummins, Team Leader
Texas Commission on Environmental Quality
Water Supply Division, MC-152
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6158
Fax: (512) 239-2214
(Via Fax and First Class Mail)

Ronald Van Dam, Technical Staff
Texas Commission on Environmental Quality
Water Supply Division, MC-152
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6191
Fax: (512) 239-2214
(Via Fax and First Class Mail)

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget C. Bohac, Acting Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007
(Via Fax and First Class Mail)

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377
(Via Fax and First Class Mail)

FOR ALTERNATIVE DISPUTE RESOLUTION:

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015
(Via Fax and First Class Mail)

REQUESTERS:

R. D. Bilbrey
1510 Peaceful Lane Dr.
San Antonio, Texas 78264

Roy J. Brown
19484 Somerset Rd.
Somerset, Texas 78069-3330

Jeff Buell
Sitterle Homes
2015 Evans Rd., Ste. 100
San Antonio, Texas 78258-7462

John J. Carlton
Armbrust & Brown. LLP
100 Congress Ave., Ste. 1300
Austin, Texas 78701-2744

Julian & Rhonda Childs
1250 Peaceful Lane Dr.
San Antonio, Texas 78264

Mark, Martha, & Wendy Dickey
1220 Peaceful Lane Dr.
San Antonio, Texas 78264-3850

Ronald J. Freeman
Freeman & Corbett, LLP
8500 Bluffstone Cv., Ste. B 104
Austin, Texas 78759-7811

G. G. Gale, Jr.
15315 San Pedro
San Antonio, Texas 78232-3719

Guadalupe Gonzales
2806 Almond Field Dr.
San Antonio, Texas 78245-2608

Denise Ingledue
25927 Torch Lily
San Antonio, Texas 78260-2443

Dianne & Ken Joaquin
9703 Cylburn Park
Converse, Texas 78109-2714

Monte B. Lloyd
8813 Fox Briar Ln.
Boerne, Texas 78006-5585

Martha Mangum
Real Estate Council of San Antonio
8706 Lockway St.
San Antonio, Texas 78217-4837

Dan Markson, NRD
Vice President of Development
111 Soledad St., Ste. 1220
San Antonio, Texas 78205-2230

Mark Mennel
4619 Tamaron Park
San Antonio, Texas 78253-5414

Sylvia Mennel
4619 Tamaron Park
San Antonio, Texas 78253-5414

Becky Oliver, Executive Director
San Antonio Builders Association
4204 Gardendale St., Ste. 312
San Antonio, Texas 78229-3132

Pauline I. Perry
6303 Pioneer Point Dr.
San Antonio, Texas 78244-1571

Gene Powell
Bitterblue, Inc.
11 Lynn Batts, Ste. 100
San Antonio, Texas 78218-3076

Kim Sapavik Shrum
San Antonio Builders Association
4204 Gardendale, Ste. 312
San Antonio, Texas 78229-3132

Frank J. Sitterle
Sitterle Homes
2015 Evans Rd., Ste. 100
San Antonio, Texas 78258-7462

Sue Wilson
1195 Peaceful Lane Dr.
San Antonio, Texas 78264-3849

Jenny & Sue Yim
923 Queens Oak
San Antonio, Texas 78258-3643

REQUESTS WITHDRAWN:

Natalie Griffith
Habitat for Humanity of San Antonio
311 Probandt
San Antonio, Texas 78204-1745

James A. Mattox
Mission Del Lago
P.O. Box 13223
Austin, Texas 78711-3223

INTERESTED PERSONS:

Esther Cabral
526 Lovett Ave.
San Antonio, Texas 78211-2818

Jerald T. Mallernee
22906 Cardigan Chase
San Antonio, Texas 78258-4071

Martha Mangum
8626 Tesoro Dr., Ste. 803
San Antonio, Texas 78217-6217

M. Lee Niles
Pape Dawson Engineers, Inc.
555 E. Ramsey Rd.
San Antonio, Texas 78216-4640

Mrs. Carl Powell
20130 Somerset Rd., Unit 1
Somerset, Texas 78069-3329

Annie Spinks
8022 Wayword Trl.
San Antonio, Texas 78244

Ryan Staveley
Bright Star Ministries
840 Palo Alto Dr.
Von Ormy, Texas 78073-5920

Robert Thorne
134 Ware Blvd.
San Antonio, Texas 78221

